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1 Department of Real Estate
320 West 4th Street, Ste. 350
2 Los Angeles, California 90013-1105
3 Telephone: (213) 576-6982 (office)

FILED

OCT - 9 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
)
11 SKYWIN INC.; and MICHAEL TRUNG TU,)
12 individually and as designated)
13 officer of Skywin Inc.,)
)
14 Respondents.)
15)
16)

No. H-33756 LA

STIPULATION
AND
AGREEMENT

17 It is hereby stipulated by and between Respondent
18 MICHAEL TRUNG TU, individually and as designated officer of
19 Skywin Inc. (sometimes referred to as "Respondent"), represented
20 by Frank M. Buda, Esq., and the Complainant, acting by and
21 through Elliott Mac Lennan, Counsel for the Department of Real
22 Estate, as follows for the purpose of settling and disposing of
23 the Accusation ("Accusation") filed on February 27, 2007, in this
24 matter:

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1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondent at a formal hearing on the Accusation, which hearing was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of this Stipulation and Agreement (Stipulation).

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

3. Respondent filed a Notice of Defense pursuant to Section 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of Defense he thereby waives his right to require the Commissioner to prove the allegations in the Accusation at a contested hearing held in accordance with the provisions of the APA and that he will waive other rights afforded to him in connection with the hearing such as the right to present evidence in his defense of the allegations in the Accusation and the right to cross-examine witnesses.

4. This Stipulation is based on Paragraphs 9(a), 9(f)(1), 9(g) and 12, alleged in the Accusation. In the interest of expedience and economy, Respondent chooses not to contest

1 these allegations, but to remain silent and understands that, as
2 a result thereof, these allegations, without being admitted or
3 denied, will serve as a prima facie basis for the disciplinary
4 action stipulated to herein. The Real Estate Commissioner shall
5 not be required to provide further evidence to prove said
6 allegations.

7 5. This Stipulation is made for the purpose of
8 reaching an agreed disposition of this proceeding and is
9 expressly limited to this proceeding and any other proceeding or
10 case in which the Department of Real Estate ("Department"), the
11 state or federal government, or any agency of this state, another
12 state or federal government is involved, and otherwise shall not
13 be admissible in any other criminal or civil proceedings.

14 6. It is understood by the parties that the Real
15 Estate Commissioner may adopt this Stipulation as his Decision
16 in this matter thereby imposing the penalty and sanctions on
17 Respondent's real estate licenses and license rights as set forth
18 in the "Order" herein below. In the event that the Commissioner,
19 in his discretion, does not adopt the Stipulation, it shall be
20 void and of no effect and Respondent shall retain the right to
21 a hearing and proceeding on the Accusation under the provisions
22 of the APA and shall not be bound by any stipulation or waiver
23 made herein:
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1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusation against Respondents herein.

9 8. Respondent understands that by agreeing to this
10 Stipulation, Respondent agrees to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of the audit. The
12 amount of said cost is \$6,739.24.

13 9. Respondent has received, read, and understands the
14 "Notice Concerning Costs of Subsequent Audit". Respondent
15 further understands that by agreeing to this Stipulation, the
16 findings set forth below in the Determination of Issues become
17 final, and the Commissioner may charge Respondent for the cost of
18 any subsequent audit conducted pursuant to Business and
19 Professions Code Section 10148 to determine if the violations
20 have been corrected. The maximum cost of the subsequent audit
21 will not exceed \$6,739.24.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed
2 that the following determination of issues shall be made:

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4 The conduct of MICHAEL TRUNG TU, as described in
5 Paragraph 4, above, constitutes violations of Business and
6 Professions Code ("Code") Sections 10145, 10159.2 and 10240 and
7 Sections 2725 and 2831 of Title 10, Chapter 6, California Code of
8 Regulations. This conduct is a basis for discipline of
9 Respondent's license pursuant to Code Sections 10177(d) and
10 10177(h).

ORDER

I.

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13 All licenses and licensing rights of Respondent MICHAEL
14 TRUNG TU under the Real Estate Law are suspended for a period of
15 thirty (30) days from the effective date of this Decision.

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17 A. Provided, however, that if Respondent MICHAEL TRUNG
18 TU requests, said thirty day suspension shall be stayed for two
19 (2) years upon condition that:

20 1. Respondent shall obey all laws, rules and
21 regulations governing the rights, duties and responsibilities of
22 a real estate licensee in the State of California; and

23 2. That no final subsequent determination be made
24 after hearing or upon stipulation, which cause for disciplinary
25 action occurred within two years from the effective date of this
26 Decision. Should such a determination be made, the Commissioner
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1 may, in his discretion, vacate and set aside the stay order and
2 reimpose all or a portion of the stayed suspension. Should no
3 such determination be made, the stay imposed herein shall become
4 permanent.

5 II.

6 Pursuant to Section 10148 of the Business and
7 Professions Code, Respondent MICHAEL TRUNG TU shall pay the
8 Commissioner's reasonable cost for (a) the audit which led to
9 this disciplinary action (b) a subsequent audit to determine if
10 Respondent is now in compliance with the Real Estate Law. The
11 cost of the audit which led to this disciplinary action is
12 \$6,739.24. In calculating the amount of the Commissioner's
13 reasonable cost, the Commissioner may use the estimated average
14 hourly salary for all persons performing audits of real estate
15 brokers, and shall include an allocation for travel time to and
16 from the auditor's place of work. Said amount for the prior and
17 subsequent audits shall not exceed \$13,478.48.

18
19 Respondent shall pay such cost within 60 days of
20 receiving an invoice from the Commissioner detailing the
21 activities performed during the audit and the amount of time
22 spent performing those activities.

23 The Commissioner may suspend the license of Respondent
24 pending a hearing held in accordance with Section 11500, et seq.,
25 of the Government Code, if payment is not timely made as provided
26 for herein, or as provided for in a subsequent agreement between
27

1 the Respondent and the Commissioner. The suspension shall remain
2 in effect until payment is made in full or until Respondent
3 enters into an agreement satisfactory to the Commissioner to
4 provide for payment, or until a decision providing otherwise is
5 adopted following a hearing held pursuant to this condition.

6 III.

7 All licenses and licensing rights of Respondent MICHAEL
8 TRUNG TU are indefinitely suspended unless or until Respondent
9 provides proof satisfactory to the Commissioner, of having taken
10 and successfully completed the continuing education course on
11 trust fund accounting and handling specified in paragraph (3) of
12 subdivision (a) of Section 10170.5 of the Business and
13 Professions Code. Proof of satisfaction of this requirement
14 includes evidence that respondent has successfully completed the
15 trust fund account and handling continuing education course
16 within 120 days prior to the effective date of the Decision in
17 this matter.
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19
20

21 DATED: 7-31-08

21 E L
22 ELLIOTT MAC LENNAN, Counsel for
23 the Department of Real Estate

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* * *

EXECUTION OF THE STIPULATION

I have read the Stipulation and Agreement and discussed it with my counsel. Its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

MAILING AND FACSIMILE

Respondent(s) (1) shall mail the original signed signature page of the stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondent(s) shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan.

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JUL-31-08 THU 12:18 PM

FAX NO.

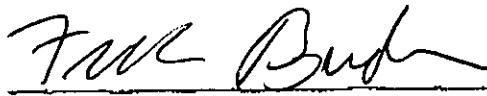
11 00110

1 A facsimile constitutes acceptance and approval of the
 2 terms and conditions of this stipulation. Respondent(s) agree,
 3 acknowledges and understands that by electronically sending to
 4 the Department a facsimile copy of Respondent's actual signature
 5 as it appears on the stipulation, which receipt of the facsimile
 6 copy by the Department shall be as binding on Respondent(s) as if
 7 the Department had received the original signed stipulation.

9
 10 DATED: 8/1/08


 MICHAEL TRONG TO, Respondent

13
 14 DATED: 8-1-08


 FRANK M. BUDA,
 Attorney for Respondent
 Approved as to form

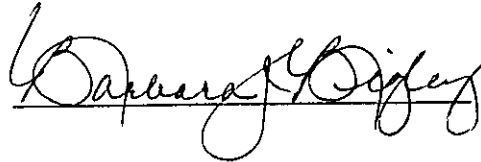
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1 The foregoing Stipulation and Agreement is hereby adopted
2
3 as my Decision as to Respondent MICHAEL TRUNG TU and shall become
4 effective at 12 o'clock noon on November 7, 2008.

5
6 IT IS SO ORDERED 9/5, 2008.

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8 JEFF DAVI
9 Real Estate Commissioner

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13 BY: Barbara J. Bigby
14 Chief Deputy Commissioner

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FILED

OCT 8 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

| | | |
|-------------------------------------|---|----------------|
| In the Matter of the Accusation of |) | No. H-33756 LA |
| |) | |
| SKYWIN, INC.; and MICHAEL TRUNG TU, |) | |
| individually and as designated |) | |
| officer of Skywin, Inc., |) | |
| |) | |
| Respondents. |) | |

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On February 27, 2007, an Accusation was filed in this matter against Respondent SKYWIN, INC..

On August 1, 2008, Respondent SKYWIN, INC., by and through its designated officer, Michael Trung Tu, petitioned the Commissioner to voluntarily surrender its real estate broker license and license rights pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent SKYWIN, INC.'s petition for voluntary surrender of its real estate broker license and license rights is accepted as of the effective date

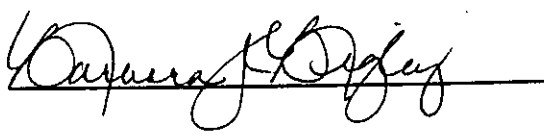
1 of this Order as set forth below, based upon the understanding
2 and agreement expressed in Respondent's Declaration dated August
3 1, 2008, (attached as Exhibit "A" hereto). Respondent's license
4 certificate, pocket card and any branch office license
5 certificate shall be sent to the below listed address so that
6 they reach the Department on or before the effective date of this
7 Order:

8 Department of Real Estate
9 Atten: Licensing Flag Section
10 P.O. Box 187000
11 Sacramento, CA 95818-7000

11 This Order shall become effective at 12 o'clock noon on
12 October 28, 2008

13 DATED: 9/5/08

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15 JEFF DAVI
16 Real Estate Commissioner

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19 BY: Barbara J. Bigby
20 Chief Deputy Commissioner

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EXHIBIT "A"

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

| | | |
|--|---|----------------|
| In the Matter of the Accusation of |) | No. H-33756 LA |
| |) | |
| <u>SKYWIN INC.</u> ; and MICHAEL TRUNG TU, |) | |
| individually and as designated |) | |
| officer of Skywin Inc., |) | |
| |) | |
| |) | |
| Respondents. |) | |
| |) | |

DECLARATION

My name is Michael Trung Tu and I am the designated officer of SKYWIN INC., which is licensed as a real estate broker and/or has license rights with respect to said license. I am authorized to sign this declaration on behalf of SKYWIN INC.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedures Act (Sections 11400 et seq., of the Government Code) SKYWIN INC. wishes to voluntarily surrender its real estate license issued

1 by the Department of Real Estate ("Department"), pursuant to
2 Business and Professions Code Section 10100.2.

3 I understand that SKYWIN INC. by so voluntarily
4 surrendering its license can only have it reinstated in
5 accordance with the provisions of Section 11522 of the
6 Government Code. I also understand that by so voluntarily
7 surrendering its license rights, SKYWIN INC. agrees to the
8 following:

9 The filing of this Declaration shall be deemed as its
10 petition for voluntary surrender. It shall also be deemed to be
11 an understanding and agreement by SKYWIN INC. that, it waives
12 all rights it has to require the Commissioner to prove the
13 allegations contained in the Accusation ("Accusation") filed in
14 this matter at a hearing held in accordance with the provisions
15 of the Administrative Procedures Act (Government Code Sections
16 11400 et seq.), and that it also waives other rights afforded to
17 it in connection with the hearing such as the right to
18 discovery, the right to present evidence in defense of the
19 allegations in the Accusation and the right to cross examine
20 witnesses. I further agree on behalf of SKYWIN INC. that upon
21 acceptance by the Commissioner, as evidenced by an appropriate
22 order, all affidavits and all relevant evidence obtained by the
23 Department in this matter prior to the Commissioner's
24 acceptance, and all allegations contained in the Accusation
25 filed in the Department Case No. H-33756 LA, may be considered
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JUL-31-08

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by the Department to be true and correct for the purpose of
deciding whether or not to grant reinstatement of SKYWIN INC.'s
license pursuant to Government Code Section 11522.

I declare under penalty of perjury under the laws of
the State of California that the above is true and correct and
that I am acting freely and voluntarily on behalf of SKYWIN INC.
to surrender its license and all license rights attached
thereto.

8/1/08, 2008
Date and Place



SKYWIN INC.
BY: MICHAEL TRUNG TU, D.O.

Handwritten signature

1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)

FILED
FEB 27 2007
DEPARTMENT OF REAL ESTATE

By *K. Friederich*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

| | | | |
|----|------------------------------------|---|----------------------------|
| 11 | In the Matter of the Accusation of |) | No. H-33756 LA |
| 12 | SKYWIN INC.; and MICHAEL TRUNG TU, |) | <u>A C C U S A T I O N</u> |
| 13 | individually and as designated |) | |
| 14 | officer of Skywin Inc., |) | |
| 15 | |) | |
| 16 | Respondents. |) | |

17 The Complainant, Janice Wadell, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against SKYWIN INC. dbas ReMax Discovery, America Escrow, and
20 America Mortgage, and MICHAEL TRUNG TU, individually and as
21 designated officer of Skywin Inc., is informed and alleges as
22 follows:

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1.

1 The Complainant, Janice Wadell, a Deputy Real Estate
2 Commissioner of the State of California makes this Accusation in
3 her official capacity.
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2.

5 All references to the "Code" are to the California
6 Business and Professions Code and all references to "Regulations"
7 are to Title 10, Chapter 6, California Code of Regulations.
8

3.

9 SKYWIN INC. (hereinafter "SKYWIN") and MICHAEL TRUNG TU
10 individually and as designated officer of SKYWIN INC.,
11 (hereinafter "TU") (sometimes hereinafter collectively referred
12 to as Respondents) are presently licensed or have license rights
13 under the Real Estate Law (Part 1 of Division 4 of the Business
14 and Professions Code, hereinafter "Code").
15

16 LICENSE HISTORY

4.

17 A. At all times material herein, SKYWIN was licensed
18 by the Department of Real Estate of the State of California
19 (hereinafter "Department") as a corporate real estate broker.
20 SKYWIN was originally licensed on January 15, 1999.
21

22 B. At all times mentioned, TU was licensed or had
23 license rights issued by the Department of Real Estate
24 (Department) as a real estate broker. On March 9, 1984, 1991, TU
25 was originally licensed as a real estate salesperson. On October
26
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1 23, 1991, TU was originally licensed as a real estate broker. On
2 January 15, 1999, TU was licensed as the designated officer of
3 SKYWIN.

4 C. At all times material herein, SKYWIN was licensed
5 by the Department of Real Estate of the State of California
6 (hereinafter "Department") as a corporate real estate broker by
7 and through TU, as the designated officer and broker
8 responsible, pursuant to Code Section 10159.2 of the Business and
9 Professions Code for supervising the activities requiring a real
10 estate license conducted on behalf SKYWIN of by SKYWIN's
11 officers, agents and employees, including TU.

12 5.

13 All further references to "Respondents", unless
14 otherwise specified, includes the parties identified in
15 Paragraphs 3 and 4, above, and also includes the officers,
16 directors, managers, employees, agents and/or real estate
17 licensees employed by or associated with said parties, who at all
18 times material herein were engaged in the furtherance of the
19 business or operations of said parties and who were acting within
20 the course and scope of their authority, agency, or employment.

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BROKERAGE

6.

At all times material herein, Respondent SKYWIN engaged in the business as a real estate broker as follows:

A. Code Section 10131(a) of the Code. SKYWIN operated a residential property resale brokerage dba ReMax Discovery; and

B. Code Section 10131(d) of the Code. SKYWIN operated a Mortgage and Loan brokerage dba America Mortgage.

FIRST CAUSE OF ACTION

(Audit Violations)

7.

On July 27, 2005, the Department completed an audit examination of the books and records of SKYWIN pertaining to its residential resale property and mortgage loan activities, requiring a real estate license as described in Paragraph 4. The audit examination covered a period of time beginning January 1, 2002 to October 30, 2004. The audit examination revealed violations of the Code and the Regulations as set forth below, and more fully discussed in Audit Reports LA 040081 and LA 040154 and the exhibits and workpapers attached to said audit report.

8.

At all times material herein, in connection with the activities described in Paragraph 6, above, Respondents SKYWIN and TU accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or

1 prospective parties to transactions handled by Respondents SKYWIN
2 and TU including purchasers, sellers, borrowers and lenders, and
3 thereafter made deposits and or disbursements of such funds.
4 During the audit period, Respondents SKYWIN and TU did not
5 maintain a trust account:

6 VIOLATIONS OF THE REAL ESTATE LAW

7 9.

8 In the course of activities described in Paragraphs 6
9 and 8, above, and during the examination period described in
10 Paragraph 7, Respondents SKYWIN and TU, acted in violation of the
11 Code and the Regulations in that:

12 (a) Failed to maintain an adequate control record in the
13 form of a columnar record in chronological order of all trust
14 funds received, in violation of Code Section 10145 and Regulation
15 2831. Earnest money deposits from the sales transactions for the
16 Buddhist Nuns, Ramon Cornejo, Paul Nguyen, Steve Dao, Jenny Tran
17 and Tai Tieu, were not recorded or recorded correctly.

18
19 (b) Failed to place trust funds, including earnest
20 money deposits, accepted on behalf of another into the hands of
21 the owner of the funds, a neutral escrow depository or into a
22 trust fund account in the name of the trustee at a bank or other
23 financial institution not later than three business days
24 following receipt of the funds by the broker or by the broker's
25 salesperson, in violation of Code Section 10145 and Regulation
26 2832(d).
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1 (c) Failed to notify the Department of the employment
2 of two salespersons, John Kim and Genhsing Lee, in violation of
3 Code Section 10161.8 and Regulation 2752.

4 (d) Failed to retain the salesperson license
5 certificate for salespersons Hoa Duc Ngo and Louis Allen Nguyen,
6 in violation of Code Section 10160 and Regulation 2753.

7 (e) Misrepresented that SKYWIN held earnest money
8 deposits for the below-mentioned sellers pursuant to the such
9 statements made on the real estate Residential Purchase
10 Agreements and Joint Escrow Instructions and/or Counter Offers,
11 in violation of Section 10176(a) and/or 10177(g): Sellers Hugo
12 Ventura, Myung Sook Youn, Mario Argueta, Jose Curiel, Antonio
13 Sepulveda, Tony Medel, and Francisco Corona.

14 (f) (1) Failed to provide a true and correct copy of a
15 Department of Real Estate approved Mortgage Loan Disclosure
16 Statement signed by the broker for borrowers David Do, Kim Ong,
17 May Trinh and Steve Dao, in violation of Code Section 10240,
18 providing only a Good Faith Estimate; and

19 (f) (2) Failed to disclose yield spread premiums from
20 lenders on the approved Mortgage Loan Disclosure Statement for
21 the aforesaid borrowers, in violation of Code Section 10240,
22 10241 and Regulation 2840.

23 (g) TU had no system in place for regularly monitoring
24 compliance with the Real Estate Law especially in regard to
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1 establishing policies to review trust fund handling, in violation
2 of Code Section 10159.2 and Regulation 2725.

3 10.

4 The conduct, acts and omissions of Respondents
5 SKYWIN and TU as described in Paragraph 9, above, violated the
6 Code and the Regulations as set forth below:

| 7 <u>PARAGRAPH</u> | <u>PROVISIONS VIOLATED</u> |
|--------------------|---|
| 8 9(a) | Code Section 10145 and 9 Regulation 2831 |
| 10 9(b) | Code Section 10145 and 11 Regulation 2832(d) |
| 12 9(c) | Code Section 10161.8 and 13 Regulation 2752 |
| 14 9(d) | Code Section 10160 and 15 Regulation 2753 |
| 16 9(e) | Code Section 10176(a) and/or 17 10177(g) |
| 18 9(f) | Code Section 10240 and Regulation 19 2840 |
| 20 9(g) | Code Section 10159.2 and Regulation 21 2725 |
| 22 | |
| 23 | |

24 The foregoing violations constitute cause for the suspension or
25 revocation of the real estate license and license rights of
26 SKYWIN under the provisions of Code Sections 10176(a), 10177(d),
27 and/or 10177(g).

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SECOND CAUSE OF ACTION

(Negligence)

11.

The overall conduct of Respondents SKYWIN and TU constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents SKYWIN and TU pursuant to Code Section 10177(g).

THIRD CAUSE OF ACTION

(Supervision and Compliance)

12.

The overall conduct of Respondent TU constitutes a failure on his part, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of SKYWIN as required by Code Section 10159.2, and to keep SKYWIN in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of TU pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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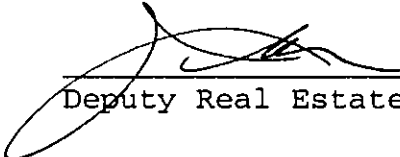
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations made by the Accusation and, that
3 upon proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent
5 SKYWIN INC., and MICHAEL TRUNG TU, individually and as designated
6 officer of Skywin Inc., under the Real Estate Law (Part 1 of
7 Division 4 of the Business and Professions Code) and for such
8 other and further relief as may be proper under other applicable
9 provisions of law.

10
11 Dated at Los Angeles, California

12 *15 November 2006*

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15 _____
16 Deputy Real Estate Commissioner
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24 cc: Skywin Inc.
25 c/o Michael Trung Tu
26 Janice Wadell
27 Sacto.
LA Audit Section - Dorcas Cheng